

**REMARKS**

Applicant has canceled original claims numbered 1 through 10 and has added new claims 11 through 30. New claims 11 through 16, 18, and 22 through 24 have been reduced in scope when compared to original claims 1 through 10, respectively (although the wording of new claims 14, 16, 18 and 22 through 24 generally corresponds to the wording of original claims 4, 6, 7, and 8 through 10, respectively). Applicant notes page 13, line 9 in connection with new Claim 17; page 13, line 29 in connection with new Claim 19; and page 12, line 36 and page 13, line 25 in connection with new Claim 20. Applicant notes the compounds of Table 9 in connection with new Claim 21. Applicant notes original Claim 6 in connection with new Claim 25 and original Claim 7 in connection with new Claim 28; and for new claims 26 and 29, the tables and index tables in connection with A as O and page 12, line 36 and page 13, line 25 in connection with R<sup>2</sup> and R<sup>3</sup>. Applicant notes the penultimate compound on page 57 (Table 9), the 29<sup>th</sup> compound on page 58 (Table 9) and the 23<sup>rd</sup> compound on page 69 (Table 10) in connection with Claim 27; and the last compound on page 57 (Table 9), the 30<sup>th</sup> compound on page 58 (Table 9) and the 24<sup>th</sup> compound on page 69 (Table 10) in connection with Claim 30.

I.

In the Office Action claims 1, 2 and 8-10 were rejected under 35 U.S.C. 102(b) as anticipated by Japanese patent document JP 60255755 attributed to Nakanishi et al. The Office Action maintained that Nakanishi et al. teaches a compound for formula I (in Nakanishi et al.) where R is methyl, R<sub>1</sub> is lower haloalkoxy, R<sub>2</sub> is lower alkyl, and m is 1 or 2; that the compound is a fungicide. Compounds of Formula I in the instant application were noted where R<sub>1</sub> is SR (SR<sub>7</sub>? where R<sub>7</sub> is alkyl?), R<sub>2</sub> and R<sub>3</sub> together represent and imidazole, R<sub>4</sub> is O-lower haloalkyl and R<sub>5</sub> is alkyl were noted.

The Office Action also maintained that Nakanishi et al. teaches a composition comprising a fungicide and a solvent, that other classes of fungicides can be added to the composition, and a method of applying the composition to plants to control fungi growth.

It is not completely evident to Applicant from the material received with the Office Action that Nakanishi et al. discloses all of the material asserted by the Office Action. In particular, Applicant submits that the Office Action has NOT indicated how Nakanishi et al. illustrates the group -A-R<sub>6</sub> as included in Formula I for the compounds claimed.

In any event, new Claim 11 recites for when R<sup>2</sup> and R<sup>3</sup> are taken together with their interconnecting nitrogen to form a saturated heterocyclic ring containing 3 to 7 atoms, that the ring is one "consisting of said interconnecting nitrogen atom and carbon atoms" (and being optionally substituted with one or more R<sup>9</sup>). Applicant submits that new Claim 11 does not

provide for R<sup>2</sup> and R<sup>3</sup> being taken together to form an imadazole ring of the type disclosed in Nakanishi et al.. New claims 12 through 24 depend directly of indirectly from Claim 11.

## II.

In the Office Action, claims 3-5 were rejected under 35 U.S.C. 103(a) as unpatentably obvious in light of Nakanishi et al. as applied to claims 1,2 and 8-10. The Office Action maintained that Nakanishi et al. teaches all that is recited in claims 3-5, except for the instant compounds where R1 is SH; that Nakanishi et al. teaches compounds where R1 is S-Me; and that it would have been obvious to one having ordinary skill in the art at the time of the invention to make the instant compound.

Applicant submits that even assuming *arguendo* that the substitution of SH for S-Me at the R1 position is obvious, the Office Action has NOT suggested how Nakanishi et al. illustrates the group -A-R6 as included in Formula I for the compounds claimed.

In any event, Applicant submits that new claims 13-15 depend indirectly from new Claim 11 and thus does not provide for R<sup>2</sup> and R<sup>3</sup> being taken together to form an imadazole ring of the type disclosed in Nakanishi et al..

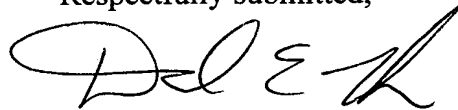
## III.

In the Office Action claims 6 and 7 were objected to as being dependent upon a rejected base claim. The Office Action suggested that these claims would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant notes new Claim 25 in connection with original Claim 6. In particular, R<sup>1</sup> is H and R<sup>6</sup> is C<sub>6</sub>-C<sub>15</sub> alkyl wherein at least one of the fourth and fifth carbon from A has one or no hydrogen attached or C<sub>5</sub>-C<sub>15</sub> 2-alkenyl wherein the fourth or fifth carbon from A has one or no hydrogen attached. Applicant also notes new Claim 28 in connection with original Claim 7. In particular, R<sup>1</sup> is H and R<sup>6</sup> is C<sub>1</sub>-C<sub>4</sub> alkyl substituted with one or more substituents selected from the group consisting of C<sub>2</sub>-C<sub>6</sub> alkylthio, C<sub>1</sub>-C<sub>6</sub> alkylsulfinyl, C<sub>2</sub>-C<sub>6</sub> alkoxy carbonyl, C<sub>2</sub>-C<sub>8</sub> dialkylamino, C<sub>2</sub>-C<sub>6</sub> alkyl carbonyl, C<sub>3</sub>-C<sub>9</sub> alkoxyalkyl carbonyl, C<sub>2</sub>-C<sub>6</sub> alkylaminocarbonyl, C<sub>3</sub>-C<sub>8</sub> dialkylaminocarbonyl, C<sub>3</sub>-C<sub>9</sub> trialkylsilyl, C<sub>3</sub>-C<sub>9</sub> halotrialkylsilyl, C<sub>4</sub>-C<sub>9</sub> alkoxytrialkylsilyl or C<sub>3</sub>-C<sub>9</sub> trialkylsilyloxy.

In view of the foregoing, allowance of the above-referenced application is respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D E H', with a stylized flourish at the end.

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